

HONORABLE LAUREN KING

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DAVID G. HENRY,

Plaintiff,

vs.

TACOMA POLICE DEPARTMENT,
RON KOMAROVSKY AND BRYNN
CELLAN

Defendants.

No. 3:22-cv-05523-LK

JOINT STATUS REPORT
AND DISCOVERY PLAN

On February 16, 2022, the parties conferred for the purpose of conducting the required FRCP 26(f) conference. Note that the Court, upon request of Plaintiff, extended the deadline by which to submit this Joint Status Report and Discovery Plan to April 5, 2023.

The parties, despite a number of drafts and communications, have not been able to reach concurrence on a joint submission. To the degree Defendants could articulate the differences, undersigned counsel has done so in this submission. Some of the disagreements cannot be accommodated. For example, Plaintiff's last draft unilaterally changed the pleading caption to reflect different parties (which is the subject of Plaintiff's

JOINT STATUS REPORT AND DISCOVERY
PLAN 1

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
253-591-5885 / Fax 253-591-5755

pending motion to amend, but has yet to be ruled on by the Court). Finally, pursuant to a previously filed Notice of Unavailability, counsel for Defendants is unavailable and unable to file April 3, 2023 – April 10, 2023.¹

1. Nature and Complexity of the Case.

Plaintiff asserts 42 USC § 1983 claims against the Defendants. He specifically claims violation of his Fourth Amendment and Fourteenth Amendment rights pursuant to claimed false arrest, excessive force, illegal search and seizure, false imprisonment and malicious prosecution. Defendants all deny liability and further deny the nature and extent of any injuries or damages claimed by Plaintiff.

This does not appear to be a complex case.

2. Additional Parties.

The plaintiff expects to amend the Complaint to substitute the City of Tacoma for the Tacoma Police Department. Further, the parties do not expect to join additional parties.

3. Consent to Magistrate

The parties do not consent to a Magistrate.

4. Proposed Discovery Plan.

a. Initial Disclosures. The FRCP 26(f) conference took place on February 16, 2023. Initial disclosures, due March, 8, 2023, were exchanged March 8, 2023.

b. Subjects, Timing & Potential Phasing of Discovery. The parties anticipate formal discovery on liability and damages. Once the initial disclosures have been

¹ Counsel's signature below serves as affirmation under penalty of perjury in the State of Washington that factual representations are true and accurate to the best of their knowledge and belief.

1 exchanged the parties can commence with formal discovery. At this time, the parties do
2 not see a need or benefit for the phasing of discovery.

3 c. Electronically Stored Information. No special issues regarding
4 electronically stored information (ESI) are anticipated. ESI can be produced by disc,
5 removable drive or via a secure internet connection. The parties discussed, and are
6 aware of, the duty to preserve evidence, including all documentary and electronically-
7 stored evidence.

8 d. Privilege Issues. The parties anticipate the need to produce confidential
9 employment materials and medical information in this case and will be proposing a
10 protective order governing the use of such materials. It is anticipated that the protective
11 order will be based on the Court's Model Protective Order. Plaintiff prospectively
12 anticipates objecting to Defendants' position that some materials and information in this
13 case will be subject to non-disclosure and/or protective order..

14 e. Proposed Limitations on Discovery. At this time, the parties do not
15 anticipate the need for any limitations on discovery beyond those set forth in the
16 governing court rules. If a need to change the limitations on discovery arises during the
17 discovery period, the parties will work cooperatively and in good faith to resolve the
18 issues prior to bringing the matter to the Court.

19 f. Discovery Related Orders. It is likely that a protective order will be
20 necessary to protect confidential and sensitive documents and the parties have agreed
21 to negotiate a mutually acceptable order based on the Court's Model Protective Order.
22 Plaintiff prospectively anticipates objecting to Defendants' position that some materials
23 and information in this case will be subject to non-disclosure and/or protective order..
24
25

1 **5. Local Court Rule (LCR) 26(f)(1) Considerations:**

2 A. Prompt Case Resolution. The parties have not reached agreement on any
3 means to bring about prompt case resolution.

4 B. Alternative Dispute Resolution. The parties agree that mediation may be
5 appropriate after discovery and the resolution of dispositive motions.

6 C. Related Cases:

7 **Plaintiff:** Ron Komarovsky and the City of Tacoma are directly involved in the
8 violation of civil rights of a Manuel Ellis who died as a result of their involvement.
9

10 **Defendants:** There appear to be no related cases. The matter(s) Plaintiff cites
11 to do not substantially involve the same parties, transaction, or event(s). Alleged events
12 did not occur at the same time. Further, the matter(s) Plaintiff cites to remain in litigated
13 status without resolution. Defendants' counsel has communicated with Plaintiff that
14 Defendants' references to other matters where Defendant Officer Ron Komarovsky is a
15 party does not automatically render that case or matter "related" to the present case.
16 Counsel has communicated with Plaintiff that, similarly, any of the prior criminal and
17 civil matters where Plaintiff was a party are not necessarily "related" for purposes of this
18 disclosure (other than *City of Tacoma v. David G. Henry*, Tacoma Municipal Court Case
19 #B00261036 TAP, which involves the same facts that forms the basis of Plaintiff's
20 current lawsuit.).²
21

22 D. Discovery Management. Parties will attempt to resolve discovery disputes
23 and exceptions to the discovery limits between and among themselves, and will enlist
24

25 ² See FN 1.

1 the assistance and direction of the Court if an impasse is reached. Parties will attempt
2 to move discovery along as expeditiously as possible.

3 E. Discovery. The City anticipates propounding written discovery requests,
4 conducting depositions of Plaintiff and other witnesses and possibly conducting
5 FRCP 35 physical and/or mental examination of Plaintiff. City reserves the right to
6 conduct additional discovery. The plaintiff anticipates propounding written discovery
7 requests, conducting depositions of defendants and other witnesses and experts.
8 Plaintiff anticipates retaining experts. Plaintiff reserves the right to conduct additional
9 discovery. Also, please see Section 4.b, infra..

10 F. Phasing Motions. At this time, the parties do not anticipate phasing
11 motions will facilitate early resolution.

12 G. Preservation of Discoverable Information. The parties do not believe there
13 are any preliminary issues regarding the preservation of discoverable information and
14 it is expected that the parties preserve existing documents, records and ESI which can
15 be reasonably anticipated to be relevant to any of the claims or defenses asserted in
16 this matter.

17 H. Privilege Issues. The inadvertent production of any document that is
18 protected from disclosure by the attorney-client privilege and/or the attorney work-
19 product doctrine or by any other privilege shall not constitute a waiver of any applicable
20 privilege as to that document or any other document identified by the defendant. The
21 parties will immediately notify each other if either knows or reasonably suspects that
22 such an inadvertent production has occurred. Any such inadvertently produced
23
24
25

documents shall be immediately returned to the producing party. Additionally, please see Section 4.d, infra.

I. Model Protocol for Discovery of ESI. If discovery of ESI becomes necessary in this case the parties agree to and will follow the Model Protocol. If the parties believe that modifications to the Model Protocol are necessary and appropriate, given the discovery sought and the needs of the case, the parties agree to work cooperatively and in good faith to agree on such modifications prior to involving the Court.

J. Alternatives to Model ESI Protocol. Not applicable.

6. Discovery Completion Date.

The parties anticipate discovery can be completed by December 1, 2023.

7. Bifurcation.

There is no need for bifurcation at this point. The parties reserve the right to seek bifurcation at a later date if appropriate.

8. Pretrial Order and Statements.

The parties do not recommend dispensing with pretrial statements or the pretrial order as called for by LCR 16.

9. Other simplifying suggestions.

The parties have no suggestions are made for shortening or simplifying the case.

10. Proposed Trial Date.

This case should be ready for trial on March 1, 2024.

11. Jury Trial.

Defendants requests a jury trial.

12. Length of Trial.

This trial can be completed in 8-10 trial days.

13. Names and Contact Information of Counsel and Pro Se Plaintiff.

Plaintiff, Pro Se:

David G. Henry
605 Summercourt Dr.
Jonesboro, GA 30236
Phone: 360-399-5442
psycliclogistics@gmail.com

Defendants City of Tacoma, Ron Komarovsky and Brynn Cellan:

Kimberly J. Cox
Tacoma City Attorney's Office
747 Market Street, Room 1120
Tacoma, WA 98402-3767
Phone: (253) 591-5637
kcox@cityoftacoma.org

14. Scheduling Conflicts.

The parties do not anticipate any scheduling conflicts at this time. All parties shall timely file any notices of unavailability.

Counsel for Defendants has the following known conflicts in 2024:

1/1/2024 – 1/10/2024

1/18/2023 – 2/2/2024

2/5/2024 – 2/16/2024

4/1/2024 – 4/12/2024

5/13/2024 – 5/24/2024

7/1/2024 – 7/12/2024

12/18/2024 – 1/3/2025

1 Plaintiff has the following conflicts in 2024 if this case is not set for trial on the
2 date proposed: Plaintiff has no current known conflicts.

3 **15. Service of All Defendants.**

4 The parties agree that all named parties have been properly served.

5 **16. Pre-Order Scheduling Conference.**

6 The parties do not request a scheduling conference before the Court enters a
7 scheduling order.

8 **17. Corporate Disclosure Statements.**

9 Not applicable.

10 **18. Chamber's Procedures, Local Rules, and Electronic Filing Procedures.**

11 Counsel and pro se plaintiff certify they have reviewed Judge King's chambers
12 procedures, the Local Rules, and the applicable Electronic
13 Filing Procedures.

14 **19. Judge King's Standing Order Regarding 28 U.S.C. § 455(b)(2) and
15 Canon 3(C)(1)(b) of the Code of Conduct for United States Judges.**

16 Counsel and pro se plaintiff certify they have reviewed and/or will comply with
17 Judge King's Standing Order, 28 U.S.C. § 455(b)(2) and Canon 3(C)(1)(b) of the Code
18 of Conduct for United States Judges (note that were located on line).

19
20 DATED this 30th day of March, 2023.

21 WILLIAM C. FOSBRE, City Attorney

22
23 By: /s/Kimberly J. Cox
24 KIMBERLY J. COX
25 WSBA #19955
Deputy City Attorney
Attorney for Defendants

JOINT STATUS REPORT AND DISCOVERY
PLAN 8

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
253-591-5885 / Fax 253-591-5755

By: David G. Henry, Plaintiff PRO SE

DECLARATION OF SERVICE

I hereby certify that on March 30, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and will send a true and correct copy of notification of such filing to the following:

Pro Se Plaintiff:

David Henry
605 SUMMERCOURT DR
JONESBORO, GA 30236

DATED March 30, 2023, at Tacoma, Washington.

/s/Gisel Castro

Gisel Castro, Legal Assistant
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5499
Fax: (253) 591-5755
gcastro@cityoftacoma.org